

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	Cause No. 1:19-CR-65-HAB
)	
SAMUEL McCLESKEY)	

OPINION AND ORDER

This matter comes before the Court on Defendant’s Motion for Compassionate Release under Section 603 of the First Step Act of 2018. (ECF No. 30). For most of the life of the COVID-related compassionate release phenomenon, there was considerable confusion as to whether exhaustion of remedies was jurisdictional, a claims-processing rule, or wholly unnecessary. That confusion was resolved, at least in this circuit, by the Seventh Circuit’s decision in *United States v. Sanford*, 986 F.3d 779 (7th Cir. 2021). There, the Court answered affirmatively the question of “whether the exhaustion requirement is a mandatory claim-processing rule and therefore *must* be enforced when properly invoked.” *Id.* at 782 (original emphasis). Where, as here, the Government raises exhaustion as a defense (*see* ECF No. 33 at 2–3), a defendant must demonstrate that he has presented his request for release to the warden at his facility, and either: (1) he has exhausted administrative appeals (if the request was denied); or (2) he has waited “30 days from the receipt of such a request by the warden of the defendant’s facility” to seek relief from the Court. 18 U.S.C. § 3582(c)(1)(A). Exhaustion is required each time a defendant seeks compassionate release. *United States v. Cain*, 2021 WL 388436 at *4 (D. Maine Feb. 3, 2021) (collecting cases).

Here, Defendant has not demonstrated exhaustion nor even recognized the requirement. Unless and until Defendant exhausts his remedies and demonstrates that exhaustion, the Court

cannot consider the merits of his compassionate release request. Therefore, his Motion (ECF No. 30) is DENIED.

SO ORDERED on July 21, 2021.

s/ Holly A. Brady

JUDGE HOLLY A. BRADY
UNITED STATES DISTRICT COURT